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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,244	11/03/2003	Eric Darby	706630US1	3760

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EXAMINER

FORD, JOHN K

ART UNIT	PAPER NUMBER
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3744

MAIL DATE	DELIVERY MODE
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05/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/700,244	Applicant(s) DARBY, ERIC	
	Examiner John K. Ford	Art Unit 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/27/07
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 8-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's response of February 27, 2007 has been given careful consideration.

Applicant has amended to specification to correct for the apparent reversal of the labels in the drawing Figures 3 and 4 in lieu of reversing the designation of Figures 3 and 4 on the drawing Figures themselves. This is somewhat unorthodox but is acceptable.

With respect to the claims applicant has added the word comprising to claim 1 but has directed no comments to the intended scope of claim 1. Consequently, the examiner has been left no option but to treat the claims as directed to the apparatus *per se*, not in combination with an automotive cooling system.

Applicant's comments with respect to Ingold are addressed in the rejection that follows, which is a reproduction of the same rejection in the previous office action. Because claims are given their broadest reasonable interpretation the following prior art is deemed to meet the structural limitations of the claims (consistent with MPEP 2114).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ingold (USP 3,691,846).

See Figures 1 and 3, in particular. A "connection port" comprised of stationary elements 2, 5 and 6 is shown. The "inner portion" 2 is fluidly connected to a fluid system coolant channel (i.e. vessel 3). An outer portion of element 6 receives the coolant sensor 7. The inner portion has a smaller diameter than the outer portion with the change in diameters occurring at stops 18 and 19. A "bleed channel" 26 is connected to the outer portion of element 6. Figure 3, shows the coolant sensor 7 in applicant's claimed "first position" and Figure 1 shows the coolant sensor 7 in applicant's claimed "second position." A first seal is shown at 16 and a second seal is shown at 28. The bleed channel 26 is open to the interior of the fluid system coolant channel (i.e. vessel 3) when the coolant sensor is retracted as shown in Figure 1 and before handle 31 has been rotated to its closed position. Likewise, the bleed channel 26 is open to the interior of the fluid system coolant channel (i.e. vessel 3) when the coolant sensor is ready to be inserted into the vessel port as shown in Figure 1 and the handle 31 is rotated to its open position to facilitate insertion.

Regarding claims 2-4 and 6, seals 16 and 28, as shown, appear to be O-rings. Grooves are clearly shown capturing these sealing elements. Even if seals 16 and 28 were not O-rings, O-rings are ubiquitous in this art and to have used O-rings in both locations would have been obvious to improve sealing, with official notice being taken of O-rings. Applicant has not seasonably traversed the subject of official notice therefore it is established as fact in this prosecution.

Applicant argues in his February 27, 2007 response that ball valve 5 of Ingold is closed when the probe 7 is removed from the vessel. This is not true during the removal process. Ball valve must be open during the process of removing the probe 7. Two further points are to be made here. The first is that the apparatus is being examined for patentability not the manner of operating it. See MPEP 2114, incorporated here by reference. MPEP 2114 explains why the manner of operating a device does not differentiate an apparatus claim from the prior art. The same is true with respect to channel 26. Placing a label on channel 26 that says "This is intended to be a bleed channel (or cannot be used as a bleed channel) does not make the channel 26 undergo a metamorphosis into a new channel 26." Again, the fact that applicant prefaces the word "channel" with the functional recitation "bleed" (applicant's intended use for the channel) does not mean that Ingold is suddenly rendered irrelevant because Ingold doesn't explicitly teach "bleeding" through channel 26. Finally, channel 26 is Ingold is inherently capable of bleeding fluid depending on the pressures of the fluids

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and external connections involved (which fluids and external connections are not part of the claimed apparatus).

Claims 8 and 20 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Ford whose telephone number is 571-272-4911. The examiner can normally be reached on Mon.-Fri. 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John K. Ford
Primary Examiner